IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SAMUEL G. BREITLING AND JO ANN BREITLING,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	**Case No. 3:15-CV-00703-B**
	§	
LNV CORPORATION et al; CODILIS & STAWIARSKI P.C.; UNKNOWN DOES 1-50;	§	
	§	
Defendants.	§	

MOTION FOR SANCTIONS FOR BAD FAITH, UNREASONABLE, AND VEXATIOUS CONDUCT AND BRIEF IN SUPPORT

Respectfully submitted,

Jason L. Sanders
Texas Bar No. 24037428
jsanders@sanderscollins.com
(469) 640-6304 – Direct
Johnathan E. Collins
Texas Bar No. 24049522
jcollins@sanderscollins.com
(214) 430-4286 – Direct
SANDERS COLLINS PLLC
1919 McKinney Avenue
Dallas, Texas 75201
www.sanderscollins.com
Telephone: (469) 640-6300

Robert T. Mowrey
Texas Bar No. 14607500
rmowrey@lockelord.com
Marc D. Cabrera
Texas Bar No. 24069453
mcabrera@lockelord.com
LOCKE LORD LLP
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201
Telephone: (214) 740-8000
Facsimile: (214) 740-8800

ATTORNEYS FOR DEFENDANT LNV CORPORATION

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LNV Corporation ("LNV") files its Motion for Sanctions and Brief in Support against Samuel and JoAnn Breitling ("Plaintiffs" or the "Breitlings") pursuant to 28 U.S.C. § 1927 and the Court's inherent powers as follows:

I. INTRODUCTION

28 U.S.C. § 1927 permits a court to impose sanctions for fees and costs arising from litigation conduct that unreasonably and vexatiously multiplies the proceedings. Plaintiffs, Samuel and Joann Breitling (the "Breitlings), turned a routine lender-borrower case into an unbearable and expensive litigation nightmare with no less than 140 filings and orders in less than two years. In doing so, the Breitlings flagrantly violated court orders, explicitly lied to the Court, lodged groundless personal attacks, and littered the Court's docket with unnecessary, harassing, and meritless filings. The Breitlings' outrageous conduct included, among other things, actually lying to the court about their residency in Sachse, Texas and using their son's disability and health challenges to garner sympathy from the Court.[1] The net result has been an unreasonable and vexatious multiplication of the proceedings that warrant an award of sanctions to compensate LNV for the costs and expenses of its defense. It is hard to imagine a case and litigation tactics more deserving of monetary sanctions.

II. FACTUAL BACKGROUND

A. Loan and Foreclosure Lawsuit

In October 2000, the Breitlings obtained a home equity loan (the "Loan") secured by real property located at 1704 Cornwall Lane, Sachse, Texas 75048 (the "Property"). (Doc. 7, Appendix

[1] As set forth herein, the Breitlings advised the court on numerous occasions that their son would be traumatized and irreparably harmed if the Breitlings were evicted from their home. This was in fact a knowingly false statement made to mislead the Court. The Breitlings and their son moved to a home near Houston sometime in 2013.

in Support of Motion to Dismiss, Ex. 1(A) ¶7).[2] The Breitlings admitted they stopped paying their Loan years ago based on advice from their counsel at the time. (Doc. 38 a p. 2). As a result of the Breitlings' admitted payment default, on April 15, 2014, LNV, as mortgagee, filed an *in rem* proceeding to foreclose on the property securing the debt (the "Property") in the 134th Judicial District Court of Dallas County, Texas: *LNV Corporation, Its Successors and Assigns v. Samuel G. Breitling, et al.*, No. DC-14-04053 (the "Foreclosure Action"). (Doc. 7, Ex. 7(A)).

The Foreclosure Action was not an expedited proceeding under Texas Rule of Civil Procedure 736. (Id.) LNV filed a lawsuit to obtain a judgment permitting foreclosure as required under TEX. CONST. art. XVI, § 50(a)(6)(D). (Id.) The Foreclosure Action also did not proceed on an expedited basis as contemplated under Rule 736 but instead afforded the Breitlings an opportunity to conduct discovery and a full trial by way of summary judgment. (Id.) LNV filed a motion for summary judgment, and on August 4, 2014, the 134th Judicial District Court granted LNV's motion for summary judgment, entered a final judgment, and held that LNV was authorized to proceed with the foreclosure ("State Court Judgment"). (Id., Ex. 7(C) and 7(F).

The Breitlings chose not appeal the State Court Judgment and forever waived any and all issues related to the enforceability of the Loan that was or could have been raised in that proceeding. (*See generally* the Foreclosure Action). The foreclosure sale occurred on September 2, 2014, at which the Property was sold to LNV pursuant to a Substitute Trustee's Deed. (Id., Ex. 8)

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[2] Pursuant to Rule 201 of the Federal Rules of Evidence, LNV respectfully request that the Court take judicial notice of *LNV Corporation, Its Successors and Assigns v. Samuel G. Breitling, et al.*, No. DC-14-04053 and all of the filings filed therein, many of which are attached to Doc. 7. *Brown v. Lippard*, 350 Fed. F. App'x. 879, 883 n. 2 (5th Cir. 2009) (per curiam) (citing cases that authorized judicial notice of the record in related cases); *In re Am. Int'l Refinery*, 402 B.R. 728, 749 (Bkrtcy.W.D.La.2008) ("A court may take judicial notice of matters that are of public record, including pleadings that have been filed in a federal or state court.").

B. The Lawsuit

Instead of appealing the State Court Judgment, the Breitlings filed this lawsuit (the "Lawsuit") on August 29, 2014, in which they collaterally attacked the State Court Judgment.[3] As this Court is aware, the Lawsuit is the Breitlings' **third** lawsuit relating to the Loan and the Property. The Breitlings asserted state and federal law claims relating to, among other things, the origination and servicing of the Loan. The Lawsuit was removed to this Court on March 3, 2015. After removal, the Breitlings began to file a litany of unnecessary, misleading and unauthorized pleadings, motions, and other filings. In these filings, the Breitlings lied and also made outrageous unsupported allegations involving wild conspiracy theories and misconduct. The scope of these conspiracies touched nearly everyone drawn into the Breitlings' cases -- their now discharged prior counsel, this Court, state trial and appellate judges, attorneys, LNV, Ms. Harriet Miers, Mr. Andy Beal, former President George W. Bush, and others. These tactics, among others, (*i.e.*, steadfastly refusing to comply with this Court's orders) resulted in a burdensome case that can only be described as unreasonable and vexatious. As a result, LNV incurred significant attorney's fees in dutifully responding to a litany of unnecessary, improper, harassing, and dubious filings.

C. Initial Motions, Pleadings, Status Conference, and Court Orders

On March 9, 2015, after removal, LNV and MGC Mortgage, Inc. ("MGC") filed their motion to dismiss, to which the Breitlings responded on April 30, 2015. (Doc. 6, LNV and MGC's Motion to Dismiss and Brief in Support; Doc. 26, Plaintiff's Objection to Defendants' Motion to Dismiss). Before the Court even conducted its first status conference, the Breitlings filed Plaintiffs' Motion for Remand and began their litigation campaign of attrition with the filing of improper

[3] Pursuant to Rule 201 of the Federal Rules of Evidence, LNV respectfully request that the Court take judicial notice of all of the flings, orders, and other documents in its own file, particularly those referenced herein. *Kinnett Dairies, Inc. v. Farrow*, 580 F.2d 1260, 1277 n. 33 (5th Cir. 1978) ("[W]e find no error in the district court's judicial notice of materials in the court's own files from prior proceedings.")

motions and requests for notice and other relief. These included an Ex Parte Amended Motion for Remand and Brief in Support Thereof, Motion to Dismiss Without Prejudice Defendants MGC Mortgage Inc., Codilis & Stawiarski PC ("Codilis") And Dovenmuehle Mortgage Inc. ("DMI"), Notice of Related Case, Notice of Constitutional Questions, Motion to Consolidate Directly Related Cases, Plaintiffs' Motion for Judicial Notice of Rick Slorp V. Lerner, Sampson & Rothfuss, Et Al, and Plaintiffs' Motion to Withdraw Motion to Remand. (Docs. 11, 18, 33, 34, 37, 41, 42, 45). None of these motions was called for by any rule or requested by this Court, yet each required review and consideration by LNV.

1. Status Conference

On June 22, 2015, the Court held a status conference. (Doc. 46). During the status conference, the Court addressed the volume of the Breitlings' filings:

> I just got two more filings today from Ms. Breitling. And so one of the things we need to talk about is curbing the number of these filings, Ms. Breitling, that don't seem to do anything except give you an opportunity to vent, which wouldn't be an appropriate reason for filing. So we need to get that -- we need to talk about that.

(Transcript of the Status Conference at pp. 4:21-25; 5:1). The Court patiently advised Ms. Breitling that she is better off not filing certain documents, e.g., the Notice of Intent. (Id. at p. 23:8-14). However, the Court indicated that if Ms. Breitling had something urgent to bring to its attention the Court would entertain it but that Ms. Breitling should keep such to a minimum. (Id. at pp. 14-16). Ms. Breitling acknowledged the Court's instructions. (Id. at pp. 17-19). The Court also cautioned Ms. Breitling to be careful about filing documents that besmirched people's character. (Id. at p. 31:8-14).

Ms. Breitling made clear during the status conference that she wanted to remain in federal court, not litigate in state court, and no longer wished to pursue her motion to remand. (Id. at pp. 13:2-8; 16:2-3; 18:4-7; 22:3-9 and 14-19).

After the status conference, the Court granted the Breitlings' motion to withdraw the motion to remand. (Doc. 48, Order). The Court granted in part and denied in part the Breitlings' motion to dismiss without prejudice MGC, DMI, and Codilis. The Court dismissed MGC and DMI with prejudice. (Doc. 51, Order).

2. First Order Regarding Amended Complaint

On October 5, 2015, the Court entered its Memorandum Opinion and Order ("First Order") in which it granted LNV's Motion to Dismiss with respect to the Breitlings' claims under the Texas Debt Collection Act, Real Estate Settlement Procedures Act, and the Truth in Lending Act. (Doc. 70). The Court also dismissed the abuse of process, fraud on the court, fraud, criminal conspiracy, civil conspiracy, and quiet title claims. (Id.). The Court denied the Motion to Dismiss the Fair Debt Collection Practices Act ("FDCPA") claim. (Id.) The Court granted the Breitlings leave to amend the civil conspiracy claims. (Id.) The Court ordered the Breitlings to amend their complaint by November 13, 2015. (Doc. 71, Order).

D. The Breitlings' Unreasonable and Vexatious Litigation Conduct

After the Court's First Order, the Breitlings began an unremitting campaign of obstinate and contumacious disregard for this Court and goading, defamatory, and baseless accusations against all others who dared to impede their litigation vendetta against LNV and its executive, Mr. Beal. Not only did the Breitlings brazenly refuse to comply with several of the Court's orders regarding filing their amended complaint, they also filed reams of meritless pleadings and motions larded with ugly personal attacks that would likely be defamatory but for the litigation privilege.

1. Refusal to File Amended Complaint in Compliance with Multiple Court Orders

The Court warned the Breitlings numerous times after it entered the First Order that they could be sanctioned for not following its orders. The Breitlings did not heed the warnings and the Court was required to enter the following seven additional orders instructing the Breitlings to comply and file a proper amended complaint before the Court finally dismissed the lawsuit with prejudice:

- **Second Order** - Breitlings filed a First Verified Amended Complaint with Jury Demand in which they asserted multiple claims that flat out ignored the Court's First Order. (Doc. 74, First Verified Amended Complaint). The Court ordered the complaint be unfiled and generously granted leave for the Breitlings to try again. (Doc. 75, Second Order).

- **Third Order** - Breitlings ignored the Second Order and filed both a Motion for Leave of the Court to File Plaintiffs' First Amended Complaint and the identical First Verified Amended Complaint. (Docs. 77 and 78). The Court struck the motion for leave because it did not contain a certificate of conference. (Doc. 80, Order Striking and Unfiling Documents). The Court also struck the amended complaint because the Breitlings did not obtain leave of Court before they filed it ("Third Order"). (Doc. 81, Order).

- **Fourth Order** - The Court issued an order clarifying that the Breitlings could file an amended complaint that comports with the Court's order or move for leave to amend their complaint to add claims not authorized by the Court's order that the Court would have to grant before the Breitlings could file such an amended complaint. (Doc. 82, Order). In the Fourth Order, the Court strongly warned the Breitlings that if they failed to comply with the Court's orders that such could result in dismissal of their lawsuit. (Id.)

- **Fifth Order** - The Breitlings filed a Motion for Leave of the Court to File Plaintiffs' First Amended Complaint. (Doc. 85). LNV filed an opposition. (Doc. 91, Response to Motion for Leave to File Amended Complaint). The Court granted the Breitlings' leave to amend related to certain FDCPA claims, but denied leave with respect to other claims because they could not survive a motion to dismiss. (Doc. 101, Memorandum Opinion and Order).

- **Sixth Order** - Rather than complying with the Fifth Order, the Breitlings caused further unnecessary delay and cost by filing an improper Notice of Interlocutory Appeal in the Fifth Circuit Court of Appeals. (Doc. 103, Sixth Order). LNV filed a Notice of Plaintiffs' Non-Compliance With Court Order ("Notice of Non-Compliance") in which it notified the Court that the Breitlings did not file an amended complaint by the deadline. (Doc. 104). The Court entered an order in which it construed LNV's Notice of Non-Compliance as a motion to dismiss. (Sixth Order, Doc. 106). In the Sixth Order, the Court gave the Breitlings an additional 21 days to respond to the Notice of Non-Compliance. (Id.) The Breitlings showed their derision and filed yet another objection, this time to the Sixth Order, in which they argued the Court erred and should not have construed the Notice of Non-Compliance as a motion to dismiss. (Doc. 112). They didn't explain their failure to file an amended complaint by the deadline. (Id.).

- **Seventh Order** - Because the Breitlings did not comply with the Sixth Order, the Court instructed the Breitlings to file a response to the Notice of Non-Compliance to explain why they did not comply with the Court-imposed deadline (Doc. 115, Seventh Order). The Court once again warned the Breitlings that their non-compliance could result in sanctions. (Id.). The Breitlings filed a 437-page pleading, with its exhibits, that failed to explain why they did not comply with the Court's orders and file a proper complaint. (Doc. 116).

- **Eighth Order** - The Court administratively closed the case pending the outcome of an improper interlocutory appeal. (Doc. 118, Order). After the Fifth Circuit dismissed the Breitlings' appeal for lack of jurisdiction (Doc. 119, Order of USCA), the Court reopened the case and provided "one last chance to file an amended complaint that complies with its previous order" by May 27th. (Doc. 120, Eighth Order). The Court again warned that the Breitlings' continued failure to comply could result in dismissal of the lawsuit. (Id.)

Despite repeated warnings and opportunities to comply with the Court's eight orders, on May 27, 2016, the Breitlings filed a virtually identical amended complaint that the Court had previously rejected. (Doc. 121, Plaintiffs' First Ammended [sic] Complaint). On the same date, in addition to their amended complaint, the Breitlings filed a Plaintiffs' Motion for Judicial Claification [sic] of Court's Orders and Instructions ("Motion for Clarification") Per June 22, 2015 Status Conference Hearing. (Doc. 122). On June 10, 2016, LNV filed its Motion to Dismiss and Brief in Support to the Breitlings' amended complaint. (Doc. 128). The Breitlings responded to the Motion to Dismiss and LNV filed a reply. (Docs. 134 and 136).

2. Dismissal of Lawsuit for Failure to Follow Numerous Court Orders

On August 10, 2016, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, the Court dismissed the Breitlings' lawsuit with prejudice. In the Memorandum Opinion and Order dismissing the case, the Court stated that the Breitlings have defied the Court's orders on several occasions" and listed 18 orders entered from October 5, 2015 – May 27, 2017. (Doc. 140 at pp. 4-6). After the Court listed the litany of contumacious conduct, it stated that:

> As the foregoing makes clear, the Court has offered the Breitlings several opportunities over the past eight months to file a proper amended complaint, and has explained in detail what claims they may include. It has also **warned them no**

> **fewer than four times that failing to follow its orders may result in dismissal**. The Breitlings have responded by (1) engaging in baseless personal attacks; (2) filing a frivolous interlocutory appeal; (3) missing a Court-imposed filing deadline; (4) refusing to explain why they missed the deadline, despite being ordered to do so; and (5) re-filing the same amended complaint that the Court had already rejected, in flagrant disregard of the Court's order.

(Doc. 140 at p. 6, Memorandum Opinion and Order) (emphasis added)). The Court also entered a final judgment. (Doc. 141, Final Judgment).

In response to the Court's dismissal, the Breitlings filed a bevy of post-judgment motions, LNV filed oppositions, the Breitlings filed replies, and the Court denied the motions. (Docs. 142, 143, and 146-149). With respect to the post-judgment motions, the Court explicitly stated that "**Enough is enough**" and that:

> This is yet the latest chapter in an eighteen-month saga characterized by the Breitlings' general disdain for Defendants, the Court, and its authority.
>
> …
>
> [R]egardless of the Court's rulings or instructions, **the Breitlings have continued to inundate the Court with frivolous and malicious filings. *Enough is enough.* There no purpose or fairness in continuing to entertain—at Defendants' expense—the Breitlings' legally and factually unfounded accusations**. To that end, the Court DIRECTS Plaintiffs to cease submitting filings to the Court in this case. If Plaintiffs continue to do so, then they will be subject to sanctions, including a bar from filing future suits in the Northern District of Texas.

(Doc. 149 at pp. 1-2) (emphasis added).

The Breitlings filed their Notice of Appeal on October 31, 2016. (Doc. 150). On January 12, 2017, the Breitlings filed their baseless Motion for Reconsideration Under Rule 60. (Doc. 151, Texas Rules of Civil Procedure § 736.11(a) Emergency Rule 60 Motion to Enforce Plaintiffs Existing Automatic Stay Automatically Granted Plaintiffs August 29, 2014 Pursuant to Plaintiffs State Law Claims). The Court denied that motion the same day that it was filed. (Doc. 153, Order).

3. The Breitlings' Other Harassing and Improper Pleadings and Motions

While LNV was addressing the Breitlings' refusal to follow the Court's orders regarding filing an amended complaint and despite the Court's admonishment that the Breitlings should not clutter the Court with meaningless filings, the Breitlings were nonetheless burying the Court and LNV with the following groundless and improper pleadings and motions:

- **Collateral Attack of Judge Tillery's State Court Judgment** - The Breitlings improperly collaterally attacked the State Court Judgment and filed Plaintiffs' Motion to Vacate Judge Tillery's Void Order, LNV filed an opposition, and the Court denied the motion. (Docs. 60, 65, 73). The Breitlings moved to reconsider the Court's denial of their First Motion to Vacate Judge Tillery's Void Order, LNV responded, and the Court denied the motion. (Docs. 83, 87, and 100).

- **Improper Motions to Consolidate Unrelated Cases –** The Breitlings filed their Motion to Consolidate Directly Related Cases, LNV filed its response, and the Court denied the motion. (Docs. 41, 52, and 84). The Breitlings filed a motion to reconsider the denial of consolidation and LNV filed a response. (Docs. 93 and 98).

- **Meritless Motion to Remand & Challenge to Federal Court Jurisdiction –** The Breitlings filed a Motion to Sever and Remand and on the same day filed a Notice of Interloctory [sic] Appeal. (Docs. 102 and 103). LVN opposed the remand. (Doc. 109). The Breitlings also filed Plaintiffs' Notice of Challenge to Federal Court Jurisdiction of Their State Claims Against Defendant LNV Corporation. (Doc. 114).

- **Groundless Motions to Recuse Judge Boyle –** The Breitlings filed Plaintiff's Motion for Disqualification of Honorable Judge Jane J. Boyle, LNV filed an opposition, and the Court denied the motion. (Docs. 86, 89, and 99). The Breitlings moved to recuse Judge Boyle a second time, which the Court denied the same day it was filed. (Docs. 138 and 139).

- **Notice of Constitutional Questions –** The Breitlings filed a Notice of Constitutional Questions, a Revised Notice of Constitutional Questions, and Plaintiffs' Ammended [sic] Notice of Constitutional Challenge (Docs. 37, 79, and 124).

4. The Breitlings' Lies and Fraud on the Court[4]

Not only were the Breitlings cluttering the Court's docket with meritless filings and flouting orders of this Court, they were explicitly and regularly making misrepresentations to the Court that

[4] Although the Breitlings are not attorneys and LNV is not filing a claim for fraud on the court, the Breitlings actions are tantamount to fraud on the court. *See e.g., Blumberg v. NSSI Liquidating Trust*, No. 3:08–CV-1392-B, 2009, WL

they lived at the Property. According to Steve Moore, a former neighbor of the Breitlings, the Breitlings moved out of the Property at or around sometime in 2013. (*See* Appendix in Support of Motion for Sanctions ("App."), Exhibit A, App. 2). Samuel Breitling advised Mr. Moore that the Breitlings and their son were relocating to a city near Houston, Texas. (Id. at ¶ 4). Mr. Moore attested that the Breitlings and their son, Matthew Breitling, also moved out of the Property in 2013. (Id. at ¶ 6).

The fact that the Breitlings moved out of the Property before their recent eviction was confirmed by Samuel Breitling's own counsel in an unrelated lawsuit in which counsel judicially admitted that Mr. Breitling resided near Houston, Texas. This admission was in a verified motion for continuance filed in January 2016 – before the eviction. (Exhibit B, App. 4). In that motion, counsel attested: "Plaintiff, who is 70 years old, now resides near Houston, Texas and is unable to travel to Dallas the week of March 21, 2016 as he is the primary care giver for his adult son who suffers from Downs Syndrome and Plaintiff cannot locate an adequate replacement care giver at this time."[5] (Id.)

More telling is what the Breitlings conveyed to the state of Texas about where they live. The Certified Abstract Records of the Texas Department of Public Safety for Samuel Breitling and Jo Ann Breitling reveal that Mr. Breitling and Ms. Breitling resided at 2307 Pleasant Creek Drive,

2998516, at *6 (N.D. Tex. Sept. 16, 2009) (stating that the elements of a fraud on the court claim are: "(1) an intentional fraud; (2) by an officer of the court; (3) which is directed at the court itself; and (4) in fact deceives the court."). To establish such a claim, "it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision." *First Nat'l Bank of Louisville v. Lustig*, 96 F.3d 1554, 1573 (5th Cir. 1996). It certainly appears that the Breitlings plan and scheme was designed to gain sympathy and improperly influence this and other courts by misrepresenting that they lived in the Property and that removing them from it would cause grave harm, particularly to their son.

[5] Pursuant to Rule 201 of the Federal Rules of Evidence, LNV respectfully request that the Court take judicial notice of *Samuel G. Breitling v. Michael Paul Reynolds*, Case Number DC-13-13424-1 at p. 1.

Kingwood, Texas 77345 when their respective Texas Driver Licenses were issued on March 27, 2014 and October 4, 2014, respectively.[6] (Exhibit C, App. 8-11). Finally, the Breitlings have had a motorcycle and vehicles registered in Harris County, Texas as far back as January 24, 2013 and as recent as January 1, 2017. (Declaration of John Kaspar, Jr., Exhibit D, its Exhibits D-1-D-3, App. 13-19).

Despite residing near Houston, the following represents a sampling of misrepresentations that the Breitlings made that they still live in the Property in Sachse:

- "Plaintiffs … are residents of the State of Texas whose address is 1704 Cornwall Drive, Sachse, Texas 75048." (Doc. 12, at p. 6, ¶ 1).

- "Plaintiffs have continuously occupied said property uninterrupted for thirty four (34) years…." (Doc. 74 at p. 33). "[W]e … have lived in our home 33 years." (Doc. 38. at p. 4).

- "I have resided in Dallas County all of my life." (Affidavit of JoAnn Breitling, Doc. 32-1 at p. 1). "I have resided in Dallas County Texas all of my life." (Affidavit of JoAnn Breitling, Doc. 38 at p. 1). "I have resided in Dallas County all of my life." (Doc. 86-1 at p. 1).

- The Breitlings pled that they were being evicted from "their home of thirty three (33) years (the **only home Plaintiff's down syndrome son, Matthew has ever known**), and if this eviction results in the wrongful death of Samuel Breitling and/or Matthew Breitling then Plaintiff … will not only hold Mr. Beal personally liable for their wrongful death(s), but she will also hold the state of Texas and the United States liable for his/their wrongful death(s)." (Doc. 37 at p. 39) (emphasis added).

- On June 22, 2015, Ms. Breitling filed the Affidavit of JoAnn Breitling in Support of Plaintiffs Notice of Intent. (Doc. 44-1). In the affidavit, Ms. Breitling attested that: "I have resided in Dallas County all of my life." (Id. at p. 1). Exhibit A to the affidavit is a letter from a physician in **Humble, Texas** regarding the Breitlings' son's condition. Ms. Breitling states on the cover page of the exhibit: "Specific to the medical condition of Samuel Matthew 'Matty' Breitling and **irreparable harm that would be caused to him should he be displaced by a wrongful eviction of the Breitlings from their home of 33 years**." (Id. at p. 5) (emphasis added). The letter from the physician

[6] Exhibit C consists of true and correct redacted rcopies of Certified Abstract Records of the Texas Department of Public Safety related to Samuel Gene Breitling and JoAnn Stokes Breitling. These certified public records are admissible pursuant to Rules 902(4) and 803(8) of the Federal Rules of Evidence. FED. R. EVID. 902(4) and 803(8); *see also Baures v. Cano*, 13–92–386–CV, 1994 WL 115862, at *2 (Tex.App.—Corpus Christi Apr. 7, 1994, writ denied).

states: "Any displacement of Mr. Breitling may leave a devastating effect on his health." (Id. at p. 6).

- Attached to one of the proposed amended complaints is the transcript of the trial before Judge Montgomery at which Mr. Kricken stated that "Ms. Breitling resides [at the Property] with her disabled son and disabled husband." (Doc. 78, Exhibit H at p. 135:4-5).

- "The Breitlings' home accommodates the special needs inherent with Matthew Breitlings' disabilities. **Removing him and his parents, who are his caregivers, from this safe environment would cause irreparable physical harm**. Removable [sic] through such a traumatic event as forcible eviction would cause him to suffer irreparable emotional harm and mental anguish." (Doc. 116, Doc. 116-9 at p. 39) (emphasis added).

- "The Breitlings have been deprived of their property; their home of 34 years and the **only home their mentally disabled son has ever known**…." (Plaintiffs' Amended Notice of Constitutional Challenge, Doc. 124 at p. 15) (emphasis added).

In sum, the Breitlings false statements are nothing short of perjury, knowingly made to sway the emotions of the Court, regardless of their falsity.

5. The Baseless and Defamatory Personal Attacks

Notwithstanding the Court's cautioning of the Breitlings about filing documents that besmirch people's character, instead of offering evidence or legal arguments, the Breitlings went on a crusade and lodged groundless personal attacks on their previous counsel, this Court, state trial and appellate judges, attorneys involved and uninvolved in the Lawsuit, former President George W. Bush, and in particular Mr. Beal.

(a) Indictments on the Judiciary, the Breitlings Previous Counsel, and Other Attorneys

The following is merely a fraction of the Breitlings' disparaging and ridiculous allegations:

- The Breitlings alleged there was collusion between an LNV attorney and Judge Tillery. (Doc. 38 at p. 7). They maintained that someone in the Dallas County Court Clerk's office was changing docket records in their cases. (Id. at p. 8; see also Doc. 32-1 at p. 3). They claimed that such changes were "evidence of collusion and conspiracy to defraud between Judge Tillery and the Beal parties and their attorneys." (Doc. 38 at p. 8). The Breitlings indicated that the evidence they offered gave the appearance that Judge Tillery accepts bribes. (Id.). The Breitlings alleged that Judge

Tillery violated the Canons to the Texas Code of Judicial Conduct, and suggested that he was engaged in "treason against the Constitution or … criminal acts, such as accepting a bribe in exchange for his judicial orders." (Plaintiff's Motion to Vacate Judge Tillery's Void Order, Doc. 60 at p. 21).

- The Breitlings alleged that "Judge Cooper colluded and conspired." (Doc. 37 at p. 37). "Judge Cooper was in on the conspiracy or else he would have informed Plaintiffs about the motion in limine when JoAnn Breitling specifically asked about it. Any reasonable person would conclude that Judge Cooper accepted a bribe or was otherwise improperly influenced to do such a despicable act." (Doc. 121 at p. 28). The Breitlings urged that "Judge Cooper must be punished, not just by removal from the bench and disbarment, but the maximum extent possible under authority of law." (Id.).

- "Judge Montgomery is heavily indebted to LNV attorney Luke Madole for his contributions to her campaign fund and his involvement in her re-election." (Doc. 37 at p. 38). "It appears Judge Montgomery allowed a political relationship with Luke Madole to influence her judicial conduct or judgment and this is enough to violate Canons 1 and 2 of the Texas Code of Judicial Conduct." (Doc. 74 at p. 28). In an affidavit that she filed, Ms. Breitling continued her barrage of indictments on Judge Montgomery and Luke Madole. (Doc. 63, Ex. A. at p. 10).

- The Breitlings stated there is a question "of whether this court, and Judge Barbara Lynn, either intentionally or unintentionally participated in a conspiracy to deprive Plaintiffs of their constitutional rights to due process and equal protection of law." (Doc. 37 at p. 31).

- The Breitlings suggested that Luke Madole's acts are indicative of improper influence and/or bribery of a judge with intent to influence judicial decisions. (Doc. 37 at p. 28).

- The Breitlings contended they fired Lane Law Firm because they lied and the Breitlings cast aspersions on the firm and its attorneys. (Doc. 38 at p. 4; Doc. 124 at pp. 16, 19).

- The Breitlings stated their former attorney Mr. Milks "was working against [the Breitlings'] interests and was instead furthering Defendant LNV's interest." (Doc. 74 at p. 26). The Breitlings essentially accused Messrs. Cabrera, Milks, and Sanders of colluding with each other and possibly Judge Boyle. (Motion for Judicial Clarification of Court's Orders and Instructions per June 22, 2015 Status Conference Hearing, Doc. 122 at p. 15).

- The Breitlings unleashed an onslaught of unsubstantiated attacks and alleged collusion and a conspiracy between Mr. Beal, Justice Elizabeth Lang-Miers, Judge Boyle, and Harriet Miers to deprive the Breitlings of their civil rights. (Doc. 137 at pp. 2-3, 5). The Breitlings accused Judges Tillery, Montgomery, Cooper, Lang-Miers, and Boyle of conspiracy to deprive them of their civil rights. (Id. at p. 4). The Breitlings lodged additional similar attacks on Harriet Miers, Jason Sanders, Marc Cabrera, Sammy Hooda, Luke Madole, Jeffrey Hardaway, and J.D. Milks. (Id. 137 at p. 9).

- As the case came closer to its conclusion, the Breitlings' claims became even more bizarre, their paranoia was taken to a new height, and they appear to allege a conspiracy at the highest level of the government. (Doc. 138 at pp. 2-8).

- "Judge Boyle's husband is in a position to thwart prosecution of Andy Beal for his crimes including the obvious improper influence/bribery and color of law crimes reflected in this very case." (Doc. 137 at p. 3, Plaintiffs' Reply in Response to LNV's Objection to Motion to Stay District Court Proceedings Pending Appellate Review of the Federal District Court's Jurisdiction Question).

- The panel decision … was tainted by the conspiracy of close friends Justice Elizabeth Lang-Miers and Judge Boyle; in collusion with Justice Elizabeth Lang-Miers' sister-in-law, Harriet Miers who is a senior partner with Locke Lord LLP and law firm representing LNV Corporation in the very matter before this court; and who has a clear financial motive to deprive Plaintiffs of their civil rights in favor of Harriet Miers' client LNV Corporation aka Andy Beal. (Doc. 137 at p. 4).

- "Harriet Miers also has a history riddled with controversy and wrong doing. Andy Beal's graft and corruption propagated through the close relationships between these three women, Harriet Miers, Judge Jane Boyle and her dear friend "Liz" Lang-Miers sister-in-law to Harriet Miers, whose influence goes considerably higher up the ranks of our government; right up to the top." (Doc. 137 at p. 5)

- "Locke Lord partner Harriet Miers' exceptionally close and long-term "trusted" friendship with Former President George W. Bush may have prompted other political favors for her important and powerful client Andy Beal." (Doc. 137 at p. 8).

- "Judge Jane Boyle is without jurisdiction to dismiss Plaintiffs' claims because she has engaged in unlawful activities that are in no way part of her duties as a judge. She is acting outside her official capacity, and therefore cannot enjoy immunity. She can and will be held personally liable for damages caused to Plaintiffs through her participation in this conspiracy to deprive them of their civil rights under color of law." (Doc. 137 at p. 11).

- Both Harriet Miers and George W. Bush have a long history of abusing their political power for personal gain. Harriet Miers also enjoys a close personal friendship with George W. Bush. George W. Bush is a friend of, and investor with, Andy Beal the sole director and owner of LNV Corporation. George W. Bush and Andy Beal are in fact neighbors. (Doc. 138 at p. 7, Plaintiff's Second Motion for Disqualification of Judge Jane Boyle and to Strike Her Orders as Void).[7]

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[7] The Court even pointed out the absurdity of the Breitlings' conspiracy theories: "But these allegations of a conspiracy between the undersigned, Texas Court of Appeals Justices Elizabeth Lang-Miers and Douglas Lang, Locke Lord

(b) Attacks on Mr. Beal

The Breitlings additionally asserted, among others, the following baseless personal attacks on Mr. Beal:

- "[I]t appeared Mr. Beal was paying off attorneys working for his adversaries." (Doc. 31 at p. 3, ¶14).

- Ms. Breitling stated that she spoke with an investigator at the district attorney's office and filed a police report against Mr. Beal as the "master mind behind [certain] fraud." (Complaint # 1500839). (Doc. 32-1 at p. 6).

- Ms. Breitling stated that Mr. Beal has used forged documents and instructed agents to use forged documents with intent to deceive the court to the detriment of Plaintiffs and others. (Doc. 37 at p. 3). She further stated that the circumstances suggest that "[Mr.] Beal and/or his attorneys have improperly influenced judicial decisions through political pressure or bribes." (Doc. 37 at pp. 4, 39).

- "Judicial findings of fact show that Beal has a propensity to pay witnesses well so they will say what he wants them to say in a court." (Doc. 37 at p. 11).

- Ms. Breitling lodged baseless accusations that Mr. Beal engages in a "pattern of coercion, undue influence, bribery, falsification of evidence and tampering with evidence." (Doc. 38 at p. 10). The Breitlings make strong implications in stating the following about Mr. Beal. Beal is a renowned gambler known to have lost at least $16 Million in a single highstakes poker game. He's a multi billionaire from Plano Texas. News articles connect Beal with Hillel ("Helly") Nahmad, who ran the Helly Nahmad Gallery inside the Carlyle Hotel on Madison Avenue in New York City. An FBI sting operation in NY resulted in the arrest of billionaire heir Helly Nahmad and some 32 other members of two Russian mob families, the Nahmad-Trincher Organization and the in September 2013: Visit the FBI website for more information …. The Nahmad-Trincher Organization and the Taiwanchik-Trincher Organization laundered the proceeds of the gambling…. (Doc. 151-1 at pp. 22).

- The Breitlings made unfounded allegations that Mr. Beal and his companies have, among other things, tampered with evidence, obstructed justice, lied to government officials, threatened victims, and bribed government employees and judicial officers. (Motion to Consolidate Directly Related Cases, Doc. 41 at pp. 2-3).

- The Breitlings stated that it appeared Mr. Beal and his attorneys have improperly influenced judges. (First Verified Amended Complaint, Doc. 74 at p. 21; see also (Doc. 121 at p. 24). The Breitlings further pled that it also appeared that Mr. Beal has bribed attorneys hired by the Breitlings. (Doc. 121 at p. 24.)

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attorney Harriet Miers, D. Andrew Beal, and former President George W. Bush are "fanciful, fantastic, delusional, irrational and wholly incredible." (Citation and footnote omitted).

- The Breitlings surmised that Mr. Beal hired Luke Madole to handle the eviction to "exert undue influence on Judge Montgomery." (Doc. 74 at p. 31). The Breitlings maintained that Mr. Beal and his companies conspired with, among others, multiple entities and Judges Tillery, Montgomery and Cooper, and attorneys Jason Sanders, Marc Cabrera, Luke Madole, and Sammy Hooda. (Doc. 121 at p. 31).

III. ARGUMENT AND AUTHORITIES

A. Sanctions Pursuant to Section 1927, Sanctions Under the Court's Inherent Powers, and a Judicial Finding the Breitlings are Vexatious Litigants

1. Sanctions Pursuant to 28 U.S.C. § 1927

LNV is entitled to an award of attorney fees under 28 U.S.C. § 1927 as a sanction against the Breitlings for their unreasonable and vexatious conduct. 28 U.S.C. § 1927 provides:

> Any attorney **or other person admitted to conduct cases in any court of the United States** or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. § 1927 (emphasis supplied).

(a) Imposing Sanctions Against Pro Se Parties Who Unreasonably and Vexatiously Multiply Proceedings is a Sound Interpretation of Section 1927

Although the circuit courts in the United States are split on whether sanctions may be awarded against pro se parties under 28 U.S.C. § 1927 and the Fifth Circuit has not considered the issue, the better approach favors the award of sanctions against unreasonable and vexatious pro se litigants. Kelsey Whitt, Note, *The Split on Sanctioning Pro Se Litigants Under 28 U.S.C. § 1927: Choose Wisely When Picking a Side, Eighth Circuit*, 73 Mo. L. Rev. 1365, 1381 (2008); compare *Wages v. IRS*, 915 F.2d 1230, 1235-36 (9th Cir.1990) (holding § 1927 applies to pro se litigants), with *Sassower v. Field*, 973 F.2d 75, 80 (2d Cir. 1992) (holding § 1927 does not apply to pro se litigants). Other circuits have avoided the question. *See Ayala v. Holmes*, 29 Fed. F. App'x. 548, 550-51 (10th Cir. 2002) ("Because there is a 'conflict among the circuits on the question whether

§ 1927 applies to pro se litigants, ... we look elsewhere for authority rather than choose sides unnecessarily.'"); *Alexander v. United States*, 121 F.3d 312, 316 (7th Cir.1997) (same). The United States Court of Appeal for the Fifth Circuit has not ruled on whether Section 1927 applies to a pro se party. *Simmons v. Methodist Hospitals of Dallas*, 632 Fed. F. App'x. 784, 787 n.5 (5th Cir. 2015) ("We note that this court has not yet addressed whether a pro se litigant can be subject to sanctions under Section 1927 and need not do so today.")

Federal district courts in Texas are also split regarding the availability of sanctions under 28 U.S.C. § 1927 against pro se litigants. *Derosa-Grund v. Time Warner, Inc.*, No. 4:15-CV-02763, 2015 WL 12806619, at *2 n.2 (S.D. Tex. Dec. 22, 2015) (noting split in authority even in the Northern District of Texas on issue of whether Section 1927 sanctions can be imposed on a pro se plaintiff); *McCully v. Stephenville Indep. Sch. Dist.*, No. 4:13-CV-702-A, 2013 WL 6768053, at *2 (N.D. Tex. Dec. 23, 2013) (Section 1927 does apply to pro se parties); *Allen v. Travis*, No. 3:06–CV–1361–M, 2007 WL 1989592, at *5 (N.D. Tex. July 10, 2007) (Section 1927 does not apply to pro se parties).

In *McCully*, the court stated that "[t]he court is of the belief that Congress must have intended to include a *pro se* litigant within the term 'other person admitted to conduct cases in any court of the United States.'" *McCully*, 2013 WL 6768053, at *2 (emphasis in original). The court further noted that "[a] *pro se* litigant is a person who is admitted, in the sense that he is permitted, to conduct cases in any court of the United States. To interpret the statute otherwise would be to attribute to Congress serious oversight in their drafting of § 1927 because there is no logical reason why a pro se litigant would not be included within the scope of the statute." *Id.* (Emphasis in original). The *McCully* court's interpretation of Section 1927 is sound and persuasive and this Court should adopt it and apply the statute to the Breitlings' unreasonable and vexatious conduct.

If there were ever a case in which the Court should sanction a pro se party under Section 1927, this is the case. The Breitlings' lies and litigation conduct deserve a penalty that not only deters their unreasonable and vexatious behavior but also makes whole the party who suffered the consequences of their bad faith and harassing tactics.

(b) This Motion is Timely Under Section 1927

LNV timely files this motion for sanctions under Section 1927. "It is well established that a federal court may consider collateral issues after an action is no longer pending." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990). "This Court has indicated that motions for costs or attorney's fees are 'independent proceeding[s] supplemental to the original proceeding and not a request for a modification of the original decree.'" *Id.* (citations omitted). "Thus, even 'years after the entry of a judgment on the merits' a federal court could consider an award of counsel fees." *Id.* (citations omitted). Motions under Section 1927 have been made after the final judgment and after appeals. *Ridder v. City of Springfield*, 109 F.3d 288, 297 (6th Cir.1997); *In re Ruben*, 825 F.2d 977, 981–82 (6th Cir. 1987) (holding that motions under Section 1927 filed several months after entry of judgment and after dismissal of an appeal was timely); *Gundacker v. Unisys Corp.*, 151 F.3d 842, 848 (8th Cir. 1998) (district court could consider sanctions after appeal filed); *Perkins v. General Motors Corp.*, 965 F.2d 597, 599 (8th Cir. 1992) (citations omitted) (because sanctions are collateral to the merits of the case, sanctions may properly be considered by the district court even when the merits are no longer before it). *Walker v. City of Bogalusa*, No. CIV. A. 96-3470, 1997 WL 666203, at *1 (E.D. La. Oct.24, 1997) (stating that "§ 1927 is not subject to the [30-day] filing deadline."); *Smith v. CB Commercial Real Estate Grp.*, 947 F.Supp. 1282, 1285 (S.D. Ind. 1996) ("Distinguishing the two grounds for sanctions, the court noted that Section 1927 'is not chained to the same language that foretold the outcome of Wabash's Rule 11 claims; thus Wabash's motion based on the statute can be brought later—indeed, § 1927 has constituted a valid basis for sanctions even after a remand from the Seventh Circuit.'") (citations omitted).[8]

(c) Standard for Sanctions Under Section 1927

Under 28 U.S.C. § 1927, a court may impose sanctions when proceedings are unreasonably and vexatiously multiplied. 28 U.S.C. § 1927; *Proctor & Gamble Co. v. Amway Corp.*, 280 F.3d 519, 525-526 (5th Cir. 2002); *Williams v. Sorrells*, No. 3:15-cv-351-M, 2016 WL 1392335, at *2 (N.D. Tex. April 8, 2016). Demonstrating "vexatious" and "unreasonable" conduct requires "evidence of bad faith, improper motive, or reckless disregard of the duty owed to the court." *Edwards v. Gen. Motors Corp.*, 153 F.3d 242, 246 (5th Cir. 1992). Consistent prosecution of claims without merit, proof of litigious activities, and continual filings in contravention of repeated warnings from the court support sanctions under Section 1927. *Proctor & Gamble Co.*, 280 F.3d at 525-526; *see also Nat'l Ass'n of Gov't Employees v. Nat'l Fed'n of Fed. Employees*, 844 F.2d 216, 224 (5th Cir. 1988) ("[t]he courts often use repeated filings, despite warnings from the court, or other proof of excessive litigiousness to justify sanctions.") Although sanctions under the statute are "'punitive in nature and require clear and convincing evidence that sanctions are justified,'" the Breitlings conduct presents just such a fact pattern. *Lawyers Title Ins. Corp. v. Doubletree Partners, L.P.*, 739 F.3d 848, 872 (5th Cir. 2014) (*quoting Bryant v. Military Dep't of Miss.*, 597 F.3d 678, 694 (5th Cir. 2010)). Put another way, though "'sparingly applied,'" the Breitlings' behavior deserves the application of Section 1927. *Lawyer's Title Ins. Corp.*, 739 F.3d at 872 (*quoting Meadowbriar Home for Children, Inc. v. Gunn*, 81 F.3d 521, 535 (5th Cir. 1996)). Strictly

[8] Although *McCully*, 2013 WL 6768053, at *1, appears to indicate motions under Section 1927 should be brought within the timeframe set forth in Rule 54(d) of the Federal Rules of Civil Procedure, this cannot be correct because Rule 54(d)(2)(E) provides that "[s]ubparagraphs (A)-(D) do not apply to claims for fees and expenses as sanctions for violating these rules or as sanctions under 28 U.S.C. §1927. FED. R. CIV. P. 54(d)(2)(E).

construing the statute in favor of the Breitlings results in one conclusion: the Breitlings should be sanctioned and responsible for the attorney fees LNV incurred in regularly responding to specious, improper, unauthorized, and defamatory pleadings and motions. *See Proctor & Gamble Co.*, 280 F.3d at 525; *FDIC v. Conner*, 20 F.3d 1376, 1384 (5th Cir. 1994). Sanctions against the Breitlings will be an employment of them in a situation "'evidencing a serious and standard disregard for the orderly process of justice….'" *Lawyers Title Ins. Corp.*, 739 F.3d at 872 (citations omitted).

(d) LNV is Entitled to Sanctions Under Section 1927 for the Breitlings' Abusive Litigation Tactics

When awarding fees pursuant to Section 1927, the court is required to "(1) identify sanctionable conduct and distinguish it from the reasons for deciding the case on the merits, (2) link the sanctionable conduct to the size of the sanctions, and (3) differentiate between sanctions awarded under different statutes." *Proctor & Gamble Co.*, 280 F.3d at 526.

(i) The Sanctionable Conduct

In this case, the litigation history is replete with evidence separate from the merits of the Lawsuit that demonstrate LNV is entitled to attorney fees. Initially, in spite of eight orders and repeated warnings to file a complaint in compliance with the Court's orders, the Breitlings refused. The Court dismissed the lawsuit with prejudice but this did not remedy all that LNV suffered because of the multiplication of the Lawsuit. The Court noted that: "Defendants have been forced to expend time and money to respond to the Breitlings' constant filings, most of which lack merit." (Doc. 140 at p. 7). Additionally, the Breitlings dumped numerous unnecessary and meritless pleadings and motions on this Court that it and LNV had to ferret out and address:

- The multiple filings in violation of several Court orders regarding filing an amended complaint. LNV filed a Notice of Non-Compliance, a Motion to Dismiss, and responded to the Breitlings' post-judgment motions that were untimely, lacked merit, and failed to include grounds for relief under the applicable rules. (Doc. 146, LNV's Response in Opposition to Rule 52 Motion and Rule 59 Motion).

- The collateral attack on the State Court Judgment was just that and lacked any merit. LNV responded to the Breitlings' initial collateral attack on the State Court Judgment and subsequent motion to reconsider the Court's denial of the collateral attacked in which it demonstrated to the Court that the *Rooker-Feldman* Doctrine barred the Breitlings' request for relief. (Doc. 65, Response in Opposition to Motion to Vacate Judge Tillery's Void Order; Doc.87, Response in Opposition to Motion to Reconsider).

- The motion to consolidate and motion to reconsider its denial improperly sought consolidation of totally unrelated cases from different judicial districts under Rule 40.02(a) of the United States Court of Federal Claims, which was wholly inapplicable to this Lawsuit. (Doc. 52, Response in Opposition to Motion to Consolidate; Doc. 98, Response in Opposition to Motion to Reconsider).

- The motions to disqualify were meritless and denied, but LNV responded to the initial motion. (Doc. 89, Response in Opposition to Motion to Disqualify).

- The motion to sever and remand and the challenge of the Court's jurisdiction were untimely, groundless, and filed after the Breitlings represented to the Court that they wished to stay in federal court and withdraw their motion to remand. (Doc. 109, Response to Motion to Sever and Remand). Additionally, at the time the motion to sever and remand was filed, there were not even any claims asserted against LNV to sever. (Id.).

- The notices of constitutional questions were protracted and largely served as a platform to personally attack all who dared to disagree with the Breitlings. Even though LNV did not file responses to these notices, it was required to review them and evaluate whether to respond.

Finally, the Breitlings filings largely supplied a forum from which they made misrepresentations to the Court and lodged unsubstantiated personal attacks on the Court, state trial and appellate court judges who did not decide in their favor, attorneys involved and uninvolved with this Lawsuit, and Mr. Beal. The Breitlings' litigious activities of urging tenuous arguments after repeated warnings from the Court is precisely what Section 1927 is aimed to curb.

(ii) Link the Sanctionable Conduct to the Size of the Sanctions

The Breitlings above-described conduct warrants an imposition of sanctions in the amount of LNV's attorney fees incurred to address the conduct. Courts consider the following factors when determining the amount of an award of sanctions in the form of attorney's fees: (1) conduct being punished; (2) fees caused by the violation; (3) the reasonableness of the fees awarded; and

(4) the least severe sanction sufficient to achieve the purpose of the rule on which the court relies to impose the sanction. *Topalian v. Ehrman*, 3 F.3d 931, 937 (5th Cir. 1993); *White v. Regional Adjustment Bureau, Inc.*, Civil Action No. 3:11-CV-1817-B, 2015 WL 12964715, at *30 (N.D. Tex. June 23, 2015), *affirmed as modified by* 641 F. App'x 298 (5th Cir. 2015), *vacated in part and modified in part by* 632 F. App'x. 234 (5th Cir. 2016), *opinion withdrawn and superseded by* 647 F. App'x. 410 (5th Cir. 2016). Only those fees caused by the party's misconduct are permissible. *Id.*

First, the conduct to be punished has been elucidated in excruciating detail. Second, LNV incurred a significant amount of attorney's fees because of the sanctionable conduct of the Breitlings. As this Court has indicated, "determining the precise amount of … attorney's fees—dollar-for-dollar—that were directly caused" by a party's bad faith can be difficult under certain circumstances and sometimes cannot be calculated with exactitude or numerical precision. *White*, WL 12964715, at *31. However, the total amount of fees caused by the Breitlings unreasonable and vexatious conduct for which LNV seeks recovery here equals $32,600. LNV seeks recovery of attorney's fees incurred for the following:

- Addressing and responding to the Breitlings' refusal to comply with the Court's orders regarding the amended complaint.
- Addressing and responding to the collateral attack on the State Court Judgment.
- Addressing and responding to the motions to consolidate.
- Addressing and responding to the motion to remand and challenge of the Court's jurisdiction.
- Addressing and responding to the meritless motions to disqualify.
- Analyzing and considering the notices of constitutional questions.

(Declaration of Jason L. Sanders, Exhibit E ¶ 8, App. 23).

Third, the amount of attorney's fees is reasonable. In the Fifth Circuit, the "lodestar" test is applied to determine the reasonableness of attorney's fees. *Heidtman v. County of El Paso*, 171 F.3d 1038, 1043 (5th Cir.1999). "A lodestar is calculated by multiplying the number of hours reasonably expended by an appropriate hourly rate in the community for such work." *Id.* Once the lodestar amount is determined, the court may adjust it based on the twelve factors set forth in *Johnson v. Georgia Highway Express*, Inc., 488 F.2d 714, 717–19 (5th Cir.1974).[9]

LNV's attorney's fees are reasonable and therefore recoverable for the legal work necessitated based on the vexatious litigation tactics of the Breitlings. To determine whether fees are reasonable, the United States Supreme Court has instructed that courts should "look[] to the marketplace as [their] guide as to what is 'reasonable.'" *Missouri v. Jenkins*, 491 U.S. 274, 285 (1989) (citations omitted).

During the "eighteen-month saga," LNV was represented by the law firm of Locke Lord LLP ("Locke Lord"). To defend the contumacious conduct, LNV has incurred $32,600 in reasonable and necessary attorney's fees. (Exhibit E ¶ 9, App. 23). Mr. Sanders' hourly rate varied from $400 - $425 and Mr. Cabrera's hourly rate was $325. (Id). The total hours for which LNV seeks reimbursement is 93 hours with a blended hourly rate of approximately $350. (Exhibit E ¶ 9, App. 24). Rates from $325 - $425 are normal, customary, and reasonable in Dallas, Texas. *See NSEW Holdings LLC v. Wells Fargo Bank, N.A.*, Civil Action No. 4:15-CV-828, 2017 WL 1030313, at *7 (E.D. Texas March 17, 2017) (finding Jason Sanders' rate of $439 reasonable and attorney rates from $250 - $569 reasonable); *Western Healthcare, LLC v. Nat'l Fire and Marine Ins. Co.*, No. 3:16-cv-565-L, 2016 WL 7735761, at *7 (N.D. Tex. December 28, 2016) (finding hourly rate of $500 per hour for a 1998 and 2000 law school graduate reasonable); *see also* Exhibit E ¶ 10 n.2, App. 24.[10] Moreover, the blended hourly rate of approximately $350 and total fees of $32,600 charged by Locke Lord in this matter for which LNV seeks recovery are reasonable. (Exhibit E ¶10, App. 24). Mr. Sanders spent approximately 27.3 hours responding to the Breitlings' vexatious conduct at a rate that varied from $400 -$425 an hour for a total of approximately $11,247.50 in attorney's fees (Exhibit E ¶ 9, App. 23). Mr. Cabrera spent approximately 65.7 hours responding to the Breitlings' vexatious conduct at a rate of $325 an hour for a total of $21,352.50 in attorney's fees. (Exhibit E ¶9, App. 23-24).

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[9] After this calculation, the Court may increase or decrease the lodestar based on the following twelve factors:

> The Johnson factors are: (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or circumstances; (8) the amount involved and results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) the award in similar cases.

Heidtman, 171 F.3d at 1043 n.5; *Johnson*, 488 F.2d at 717–19. The factors Texas courts consider to assess the reasonableness of attorney's fees are comparable to the factors federal courts employ. *Kona Technology Corp. v. Southern Pacific Transp. Co.*, 225 F.3d 595, 614 n. 7 (5th Cir.2000); *see also Vela v. City of Houston*, 276 F.3d 659, 680 n. 24 (5th Cir.2001); *Northwinds Abatement, Inc. v. Employers Insurance of Wausau*, 258 F .3d 345, 354 n. 9 (5th Cir.2001); *Mid–Continent Casualty Co. v. Chevron Pipe Line Co.*, 205 F.3d 222, 232 (5th Cir.2000); *Robinson v. State Farm Fire & Casualty Co.*, 13 F.3d 160, 164 (5th Cir.1994). This case was removed based on Federal Question Jurisdiction, and thus, this Court should use the factors used by federal courts. However, even if the Court uses the Texas factors, the outcome would be the same given the similarly of the factors.

The rates and fees charged by Locke Lord are reasonable and consistent with rates charged by comparable firms in Texas. *See NSEW Holdings*, 2017 WL 1030313, at *7. The rates are "in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Missouri*, 491 U.S. at 286 (*citing Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984)); *see also* Sanders Declaration. Additionally, the rates charged by

[10] Under certain circumstances, courts have reduced associate rates, e.g., to $275 and $300 per hour but such a reduction is not warranted here given the low blended hourly rate and nominal amount sought compared to the outrageous conduct. *Western Healthcare, LLC*, 2016 WL 7735761, at *7 (reducing hourly rate to $275); *US Green Building Council, Inc. v. Wardell*, No. 3:14-CV-01541-M-BH, 2016 WL 3752964, at *8 (N.D. Tex. June 17, 2016), adopted by 2016 WL 3766362 (N.D. Tex. July 11, 2016) (reducing hourly rates to $500 per hour for partners and $300 per hour for associates).

Locke Lord in this matter are consistent with the rates charged by Locke Lord in similar matters in which Locke Lord represented LNV. (Exhibit E ¶ 10, App. 24).

The services Locke Lord provided to defend against the Breitlings' conduct include, among other things, the activities listed on page 22 herein in bullet points 1-6. The attorneys who worked on this matter possess the skill requisite to properly perform the legal services rendered in this matter. (Exhibit E ¶¶ 3-7, App. 21-23). Mr. Sanders clerked for a state supreme court justice, has practiced law in Dallas for over 13 years, and has extensive federal court experience. (Exhibit E ¶¶ 3-5, App. 21-22). Mr. Cabrera has been practicing law for over 7 years and he also has significant experience. (Exhibit E ¶¶ 6-7, App. 22-23). The total fees incurred to respond to the Breitlings' abusive litigation tactics for which LNV seeks recovery equals $32,600. (Exhibit E ¶ 9, App. 23). Given the volume of filings and litigiousness of the Lawsuit, this amount of attorney's fees was reasonable and necessary to defend the Breitlings' conduct and there is no need to adjust the lodestar calculation.[11]

Fourth, the final factor in awarding fees under Section 1927 is that the Court should issue the least severe sanction sufficient to achieve the purpose of the rule on which the court relies to impose the sanction. Here, the award of attorney's fees incurred to respond to the litigation abuses

[11] There is no need to decrease the attorney's fees under the 12 *Johnson* factors. The total amount of attorney's fees that the Breitlings caused LNV to incur equals in excess of $200,000, which is a significantly larger amount than LNV seeks herein. Accordingly, LNV is being extremely judicious in the amount of attorney's fees that it is asking the Court to award. LNV could seek all of the fees it incurred in this Court given the Breitlings' outright refusal to cooperate in the litigation resulting in dismissal of the lawsuit under Rule 41(b). Alternatively, at a minimum, LNV could also seek additional attorney's fees based on other unnecessary and unfounded filings of the Breitlings. Additionally, as the Fifth Circuit has indicated, the lodestar "is presumptively reasonable and should be modified only in exceptional cases." *Watkins v. Fordice*, 7 F.3d 453, 457 (5th Cir. 1993).

is the least severe sanction that will both deter the Breitlings' behavior and remedy the harm caused to LNV.[12]

(iii) The Award of Sanctions Should be Based on Section 1927

When awarding sanctions, the Court is to differentiate between sanctions awarded under different statutes. Here, as reflected in this motion, LNV urges the Court to award sanctions based on Section 1927.

2. If the Court Does Not Award Sanctions Pursuant to Section 1927, LNV is Entitled to Sanctions Under the Court's Inherent Powers for the Breitlings' Abusive Litigation Tactics

Federal courts have inherent power to sanction bad-faith conduct. *Elliott v. Tilton*, 64 F.3d 215, 217 (5th Cir.1995); *see also Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-45, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991). A court's "decision to invoke the inherent power to sanction requires a finding of 'bad faith or willful abuse of the judicial process'" and this "high threshold" must be proven by clear and convincing evidence. *Cadle Co. v. Moore (In re Moore)*, 739 F.3d 724, 729, 730 (5th Cir. 2014) (citations omitted). Sanctions must "be tailored to fit the particular wrong." *Topalian v. Ehrman*, 3 F.3d 931, 936, n.5 (5th Cir.1993) (extending the analytical principles for determining sanctions under Rule 11 "across-the-board" to all of the district court's sanction powers).

As this Court has indicated "[f]ederal courts have the inherent authority to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *White*, 2015 WL 12964715, at *29. "Toward that end, federal courts are empowered to sanction bad faith conduct occurring during the litigation." *Id.* "It goes without saying that lying to the court constitutes bad faith conduct." *Id.* (*citing Chambers*, 501 U.S. at 42, 46, 50-51 ("upholding the district court's use of its inherent authority to sanction bad faith conduct which included 'misleading and lying to the court.'")). In quoting the Supreme Court in *Chambers*, this Court stated that inherent authority should only be invoked when no other sanction created by statute or the Federal rules is "'up to the task.'" *Id.* (*quoting Chambers,* 501 U.S. at 43-46). Certain sanction methods reach "'only certain individuals or conduct'" but "'**the inherent power extends to a full range of litigation abuses**.'" *Id.* (*quoting Chambers,* 501 U.S. at 46) (emphasis added). "The term 'bad faith' has been described as conduct involving 'fraudulent intent and a desire to suppress the truth.'" *Id.* at n.258 (*quoting Consolidated Aluminum Corp. v. Alcoa, Inc.*, 244 F.R.D. 335, 344 (M.D. La. 2006)).

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[12] The Breitlings have filed pleadings in this Court, the Dallas Court of Appeals, the Texas Supreme Court, the United States Court of Appeal for the Fifth Circuit, and the United States Supreme Court.

Here, if the Court elects not to award sanctions under Section 1927, it should exercise its inherent powers for all of the reasons set forth in the preceding sections of this motion and award sanctions.

3. This Court Should Make an Express Finding That the Breitlings are Vexatious Litigants

The Breitlings constitute vexatious litigants. Demonstrating "vexatious" conduct requires "evidence of bad faith, improper motive, or reckless disregard of the duty owed to the court." *Edwards*, 153 F.3d at 24. "Bad faith has been described as 'delaying or disrupting the litigation or ... hampering enforcement of a court order.'" *Smith v. Hertz Equipment Rental*, No. Civ.A. 3:00–CV–2410, 2002 WL 22062, at *4 (N.D. Tex. Jan. 4, 2002) (*quoting Chambers*, 501 U.S. at 44–45 (1991). (citation omitted)); *see also Word of Faith World Outreach Center Church, Inc. v. Morales,* 143 F.R.D. 109, 115 (W.D. Tex. 1992) (ignoring repeated warnings, filing false pleadings, and delay tactics, among other things, evidence bad faith) (*quoting Chambers,* 501 U.S. 32).

This Court has already determined that the Breitlings conduct in this case constitutes bad faith:

- "[A]fter all the chances and instructions that the Court has given, it can only conclude that the **Breitlings are acting in bad faith and willfully disobeying its orders**."
- "[B]ased on the Breitlings' multiple attempts to file an amended complaint and the Court's clarifying instructions, it is reasonable to conclude that **the Breitlings are intentionally flouting the Court's orders in bad faith**."
- "Although dismissal with prejudice is a sanction to be 'charily applied,' … this is the sort of **intentional, contumacious, and bad faith behavior** that courts cannot indulge."

(Doc. 140 at pp. 7, 9) (emphasis added).

In addition to the monetary sanctions requested above and the Court's finding of bad faith conduct, the Court should similarly make an express finding that the Breitlings are vexatious litigants. For the reasons reflected in the Court's dismissal of the lawsuit with prejudice and detailed in this motion, LNV requests that the Court make an express finding that the Breitlings are vexatious litigants.[13]

IV. CONCLUSION

For the foregoing reasons, LNV requests that the Court make a finding that the Breitlings' conduct was unreasonable and vexatious and therefore justifies an award of the attorney's fees that LNV incurred in this Lawsuit, make an express finding that the Breitlings are vexatious litigants, and grant LNV any and all other remedies at law or in equity to which it is justly entitled.

[13] Although LNV seeks the Court to expressly find the Breitlings vexatious litigants, at this time, it does not seek to enjoin them. *See, e.g., In the Matter of: Carroll*, No. 16-30996, 2017 WL 963141, at *3 (5th Cir. March 13, 2017) (listing the elements for injunctive relief against vexatious litigants and affirming sanctions against pro se party) (*quoting Baum v. Blue Moon Ventures, LLC,* 513 F.3d 181, 189 (5th Cir. 2008) (*quoting Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 818 (4th Cir. 2004)).

Respectfully submitted,

/s/ Jason L. Sanders

Jason L. Sanders
Texas Bar No. 24037428
jsanders@sanderscollins.com
(469) 640-6304 – Direct
Johnathan E. Collins
Texas Bar No. 24049522
jcollins@sanderscollins.com
(214) 430-4286 – Direct
SANDERS COLLINS PLLC
1919 McKinney Avenue
Dallas, Texas 75201
www.sanderscollins.com
Telephone: (469) 640-6300

Robert T. Mowrey
Texas Bar No. 14607500
rmowrey@lockelord.com
Marc D. Cabrera
Texas Bar No. 24069453
mcabrera@lockelord.com
LOCKE LORD LLP
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201
Telephone: (214) 740-8000
Facsimile: (214) 740-8800

ATTORNEYS FOR DEFENDANT LNV CORPORATION

CERTIFICATE OF CONFERENCE

The undersigned counsel for LNV Corporation, Jason L. Sanders, hereby certifies that on March 29, 2017, he and Mr. Cabrera contacted Ms. Breitling to discuss the relief sought in this Motion. Ms. Breitlings indicated that she and Mr. Breitling are opposed to the requested relief. Accordingly, LNV now presents the Motion to this Court for consideration.

/s/ Jason L. Sanders

Counsel for LNV Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon Ms. JoAnn Breitling and counsel of record via the Court's CM/ECF system pursuant to the Federal Rules of Civil Procedure on this 29th day of March 2017.[14]

/s/ Jason L. Sanders
Jason L. Sanders

[14] Counsel will send a copy by United States Mail to Mr. Samuel Breitling on March 30, 2017.